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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 270

INDUSTRIAL COMMISSION OF WISCONSIN, LEO THOMAS KOPP, AND STATE OF WISCONSIN,
Petitioners,

vs.

E. E. McCARTIN AND CONTINENTAL CASUALTY COMPANY, A CORPORATION

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN AND BRIEF IN SUPPORT THEREOF.

JOHN E. MARTIN,
Attorney General of Wisconsin;
MORTIMER J. LEVITAN,
Assistant Attorney General of Wisconsin,
Counsel for Petitioners, Industrial Commission of Wisconsin and State of Wisconsin.

LEO THOMAS KOPP,
Petitioner.

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PETITION FOR WRIT OF CERTIORARI

MAY IT PLEASE THE COURT:

The petition of the Industrial Commission of Wisconsin, Leo Thomas Kopp, and State of Wisconsin, respectfully shows to this Honorable Court:

A

Summary Statement of the Matter Involved

This petition is filed to obtain a review of the judgment of the Supreme Court of the State of Wisconsin, dated April 12, 1946, in the case of *E. E. McCartin and Continental Casualty Company, a Corporation, Respondents,* v.

Industrial Commission of Wisconsin, Leo Thomas Kopp, and State of Wisconsin, Appellants, holding that under the full faith and credit clause of the Federal Constitution as construed by this Court in *Magnolia Petroleum Co.* v. *Hunt,* 320 U. S. 430, an award of workmen's compensation made in Illinois (where the contract of employment had been entered into) pursuant to a settlement agreement between employee and employer which expressly stated that it was not to bar any rights that the employee might have under the Wisconsin Compensation Act, precluded all recovery under the Compensation Act of Wisconsin (where the injury occurred).

There is no dispute as to the facts. Leo Thomas Kopp (R. 134), who resided at Rockford, Illinois (R. 134, 135), had worked as a bricklayer (R. 134) in Illinois for E. E. McCartin (R. 135), a contractor who was an Illinois resident (R. 147, 148). Pursuant to a contract made in Illinois (R. 135, 141, 142, 144), Kopp agreed to work for McCartin on a building job at Beloit, Wisconsin (R. 135). The job lasted about ten months (R. 135, 142, 144), during which time Kopp drove back and forth between his home in Rockford and Beloit (R. 142). On May 5, 1943, while working for McCartin (R. 134) on the Beloit job (R. 134), Kopp suffered an injury to his left eye (R. 133, 134). It was admitted that both McCartin and Kopp were subject to the Wisconsin Compensation Act (R. 134).

On June 7, 1943, Kopp filed an application for adjustment of claim with the Wisconsin Industrial Commission (R. 115-116). On July 20, 1943, he filed an application for adjustment of claim with the Illinois Industrial Commission (R. 148-151), in which the general nature of the dispute was given as "Whether Illinois or Wisconsin has jurisdiction in my case" (R. 150). On November 29, 1943, a settlement contract, dated November 3, 1943 (R. 153), was filed

with the Illinois Commission (R. 151-154) in which it was expressly stated: "'This settlement does not affect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin'' (R. 152). On November 29, 1943, Kopp filed with the Illinois Commission a petition for lump sum (R. 155-157), and on December 3, 1943 (R. 137), the Illinois Commission held a hearing on said petition (R. 137-140, 163-168). On December 7, 1943, pursuant to approval endorsed on said petition, full payment was made of compensation due under the Illinois Compensation Act (R. 134, 137, 141, 159-160), and on January 10, 1944, the Illinois Industrial Commission issued a formal lump sum settlement order (R. 161-162).

Thereafter E. E. McCartin and Continental Casualty Company, by their attorneys, filed an amended answer to the application pending before the Wisconsin Industrial Commission setting forth as a special defense that under the full faith and credit clause of the Constitution of the United States proceedings under the Wisconsin Act were barred by the award and payment under the Illinois Workmen's Compensation Act (R. 117-120).

The Wisconsin Industrial Commission held a hearing on February 24, 1944 (R. 121); and on March 10, 1944, the said Commission received a letter from the Attorney General of Wisconsin making a claim for contribution to the state fund under the provisions of sec. 102.59 of the Wisconsin Statutes, 143 (R. 133). On April 18, 1944, an examiner for said Industrial Commission entered an interlocutory award ordering the payment of certain benefits, but giving credit for the sums paid under the Illinois law and making certain reservations, among them the question of payment to the state fund, until determination of the permanent impairment of vision (R. 120-129). The said

Industrial Commission affirmed the order of the examiner on May 15, 1944 (R. 129-132).

An action to review the Wisconsin Industrial Commission's order was commenced in the Circuit Court for Dane County, Wisconsin (R. 111-114), and that Court on November 20, 1945, entered a judgment setting aside the order and award of the Industrial Commission (R. 101-111, 172-173). On appeal therefrom by the Industrial Commission of Wisconsin, Leo Thomas Kopp, and State of Wisconsin, in accordance with the Wisconsin Statutes, the Supreme Court of the State of Wisconsin on April 12, 1946, rendered its decision and judgment affirming the judgment of said Circuit Court. The opinion of the Supreme Court of the State of Wisconsin appears in 248 Wis. 570, and is set forth in full in the record (R. 181-186).

B

This Court Has Jurisdiction

This Court has jurisdiction under sec. 237 (b) of the Federal Judicial Code (28 U. S. C. § 344 (b)), because a final judgment has been rendered by the Supreme Court of Wisconsin, the highest court of the state in which a decision can be had, and because a right under the Constitution of the United States is claimed by the respondents, namely, that under the full faith and credit clause, Art. IV, § 1 of the Constitution of the United States an award of compensation for personal injury under the Illinois Workmen's Compensation Act (Ill. Rev. Stat., ch. 48, §§ 138-172) bars a further recovery of compensation for the same injury under the Wisconsin Compensation Act (ch. 102, Wis. Stats.); notwithstanding a provision in the Illinois proceedings that such rights as the injured employee might have under the Wisconsin Compensation Act would not be affected. The

cases upon which petitioners rely in support of jurisdiction are:

Magnolia Petroleum Co. v. *Hunt*, 320 U. S. 430;

Industrial Comm. v. *Nordenholt Co.*, 259 U. S. 263 (1922);

Williams v. *North Carolina*, 325 U. S. 226 (1945).

C

The Question Involved

Where employer and employee were subject to the compensation laws of both Illinois and Wisconsin, does a compensation award made in Illinois pursuant to a settlement contract, which expressly stated that it was not to affect such rights as the employee might have under the Wisconsin Compensation Act, bar all recovery in Wisconsin under the Wisconsin Compensation Act because of the full faith and credit clause of the Constitution of the United States?

D

Reasons Relied On for Allowance of Writ

1. The applicability of the full faith and credit clause of the Constitution of the United States is a federal question of substance, and your petitioners contend that in the instant case the State Court has decided the federal question in a way probably not in accord with the applicable decisions of this Court (Supreme Court Rule 38, par. (5) (a)). It is contended that the case of *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, which was held to be controlling, is not applicable to the case at bar because the limiting provision in the settlement contract in Illinois became an integral part of the Illinois award which, by necessary implication, contemplated a further award in Wis-

consin, and hence did not bar the making of a further award in Wisconsin.

2. While the Supreme Court of Wisconsin recognized in its decision that this Court did not in *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, pass on the situation where the compensation law of the state making the first award did not bar recovery in both states, it stated that:

> "* * * the case was decided wholly on the effect to be given to the full-faith-and-credit clause of the constitution, and to hold otherwise for the reason here urged would require us to disregard the language and reasoning used in the decision" *McCartin* v. *Industrial Comm.*, 248 Wis. 570, 575 (R. 185).

It is contended that the difference in the statutory provisions involved makes inapplicable the decision of this Court in *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, and that the Supreme Court of the State of Wisconsin erroneously gave a broader interpretation to this Court's opinion than was contemplated by this Court.

3. Because of the interest of the State of Wisconsin in effectuating its policy regarding additional payments from a state fund in cases involving second injuries, the state should be permitted to apply its own compensation law even though such application involved an exception to the full faith and credit clause. The decision of the Supreme Court of the State of Wisconsin, by deciding the instant case in favor of the respondents, decided a federal question of substance which, so far as petitioners are informed, was not theretofore determined by this Court.

Wherefore, Your petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the State of Wisconsin, commanding that court to certify and send to this

Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 149, August Term, 1945, *E. E. McCartin and Continental Casualty Company, a Corporation, Respondents,* v. *Industrial Commission of Wisconsin, Leo Thomas Kopp, and State of Wisconsin, Appellants,* and that the said judgment of the Supreme Court of Wisconsin may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

JOHN E. MARTIN,
Attorney General of Wisconsin;
MORTIMER LEVITAN,
Assistant Attorney General of Wisconsin, Counsel for Petitioners, Industrial Commission of Wisconsin, and State of Wisconsin.

I hereby join in the foregoing petition for writ of certiorari.

LEO THOMAS KOPP,
Pro se.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 270

INDUSTRIAL COMMISSION OF WISCONSIN, LEO THOMAS KOPP, AND STATE OF WISCONSIN,
Petitioners,

vs.

E. E. McCARTIN AND CONTINENTAL CASUALTY COMPANY, A CORPORATION

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The Opinion of the Court Below

The opinion of the Wisconsin Supreme Court is reported in 248 Wis. 570, and is also printed in full in the record (R. 181-186).

Jurisdiction

The jurisdiction of this Court is invoked under sec. 237(b) of the Federal Judicial Code (28 U. S. C. § 344 (b)). The State Court has decided a federal question in a way probably not in accord with applicable decisions of this Court, and has decided a federal question of substance not

theretofore determined by this Court (Supreme Court Rule 38 (5) (a)). The date of the judgment to be reviewed is April 12, 1946 (R. 180).

Statement of the Case

This has already been stated in the preceding petition under A (p. 1), which is here adopted and made a part of this brief.

Specification of Errors

The Wisconsin Supreme Court erred in finding and holding that under the facts of this case the full faith and credit clause of the Constitution of the United States precluded a recovery under the Compensation Act of Wisconsin, and it also erred in not recognizing an exception to the full faith and credit clause because of the interest of the State of Wisconsin in the proceedings.

ARGUMENT

Summary of Argument

Point A. Decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, is inapplicable because Illinois award was based on settlement agreement expressly stating that it did not affect rights employee might have under Wisconsin Compensation Act.

Point B. *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, expressly states that it did not decide case where state making first award (as in present case) would allow compensation notwithstanding previous award in another state.

Point C. Provisions in Wisconsin Compensation Act for payment of $75 into State Treasury for second injury fund in cases of specified injuries, constitute sufficient grounds for creation of exception to full faith and credit clause.

Point D. Because of apparent departure from generally recognized rule in compensation cases, decision in *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, should be re-examined and limits of application indicated.

Point A

Decision in Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, is inapplicable because Illinois award was based on settlement agreement expressly stating that it did not affect rights employee might have under Wisconsin Compensation Act.

The settlement contract entered into in Illinois between E. E. McCartin, the employer, and L. T. Kopp, the injured employee, contained the following provision: "This settlement does not affect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin" (R. 152). This reservation in Illinois of rights under the Wisconsin Compensation Act was manifestly the result of an understanding between the parties that payment under the Illinois law would not preclude the assertion of rights under the Wisconsin law. The Director of Workmen's Compensation for the Wisconsin Industrial Commission, prior to the making of the settlement agreement, notified by letter Mr. McCartin's insurance carrier that the Commission had informed Mr. Kopp that he was entitled to proceed under the Illinois Act and then claim compensation under the Wisconsin Act with credit to be given for the amount paid under the provisions of the Illinois Act (R. 168); and the attorney who later signed the settlement agreement on behalf of the employer (R. 154), answered in a letter in which he stated that the Commission's letter had been referred to him for reply, and also stated in part:

"• • • We understand from your advices that if we make payments to Kopp under the Illinois Work-

men's Compensation Act, for the loss of his left eye, you, in the event you make an award to Kopp under the Wisconsin Act for the same injury, will credit your award with the amount paid to Kopp under the provisions of the Illinois Act. With this understanding, we are proceeding to pay Kopp compensation under the provisions of the Illinois Act" (R. 170-171).

Under the Illinois law, the said settlement contract, (R. 151-154), which had been approved by the Illinois Commission (R. 193), became "in legal effect an award." *Hartford Accident Co.* v. *Indus. Com.*, 320 Ill. 544, 546 (1926). Approval was necessary under § 23 of the Illinois Workmen's Compensation Act (§ 160 of ch. 48, Ill. Rev. Stat., 1943), which provided in part:

> "No employee, personal representative, or beneficiary shall have power to waive any of the provisions of this Act in regard to the amount of compensation which may be payable to such employee, personal representative or beneficiary hereunder except after approval by the Industrial Commission."

The approved settlement contract, then, became in legal effect an award reserving rights under the Wisconsin Compensation Act. The reservation of rights under the Wisconsin Compensation Act was not eliminated by an application and order for lump sum payment. Under the provisions of § 9 of the Illinois Compensation Act (ch. 48, § 146, Ill. Rev. Stat., 1943),

> "Any employer or employee or beneficiary who shall desire to have such compensation, or any unpaid part thereof, paid in a lump sum, may petition the commission, asking that such compensation be so paid, and if, upon proper notice to the interested parties and a proper showing made before such commission or any member thereof, it appears to the best interest of the

parties that such compensation be so paid, the commission may order the commutation of the compensation to an equivalent lump sum, which commutation shall be an amount which will equal the total sum of the probable future payments capitalized at their present value upon the basis of interest calculated at three per centum per annum with annual rests: * * *."

The application filed for lump sum payment was necessarily for commutation of the compensation due according to the settlement contract (R. 155-156). The stenographic report of the proceedings before the Industrial Commission of Illinois indicates that Mr. Kopp understood that he retained rights under the Wisconsin Compensation Act (R. 165-168). The Illinois Commission endorsed its approval on the petition for lump sum, and Mr. Kopp signed a final receipt acknowledging the receipt of $2,112 "in full settlement of compensation under the provisions of the Illinois Workmen's Compensation Act" (R. 159-160). Thereafter the Industrial Commission of Illinois issued a formal "Lump Sum Settlement Order" (R. 161-162). The lump sum settlement order was merely an order for lump sum payment of the amount due under the settlement contract in accordance with the Illinois law. It did not purport to affect in any way the rights reserved in the settlement contract. Because the proceedings in Illinois contemplated an additional award under the Compensation Act of Wisconsin, there was no final and conclusive disposition in Illinois of all rights arising from the personal injury sustained in Wisconsin.

Point B

Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, expressly states that it did not decide case where state making first award (as in present case) would allow compensation notwithstanding previous award in another state.

In *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, 443, this Court said:

> "* * * We have no occasion to consider what effect would be required to be given to the Texas award if the Texas courts held that an award of compensation in another state would not bar an award in Texas, for as we have seen, Texas does not allow such a second recovery."

The Texas law (Texas Rev. Civ. Stat., Title 130, Art. 8306, § 19) provides "that no recovery can be had by the injured employee hereunder in the event he has elected to pursue his remedy and recovers in the State where such injury occurred."

Sec. 5 of the Illinois Compensation Act defines the term "employee" as used in the Compensation Act, as including, among others:

> "Second—Every person in the service of another under any contract of hire, express or implied, oral or written, including persons whose employment is outside of the State of Illinois where the contract of hire is made within the State of Illinois * * *" (Ch. 48, § 142, Ill. Rev. Stat., 1943).

Thus under the Illinois compensation law, where the contract of hire is made in Illinois, the Illinois law expressly applies, although the employment is outside of the State.

The Illinois Compensation Act "does not cover injuries sustained outside of Illinois where the contract of em-

ployment is entered into outside of this State." *Severin* v. *Industrial Com.*, 363 Ill. 217, 219 (1936). If the contract is made in Illinois, compensation is payable in that State no matter where the injury occurred. Where the contract is made in Illinois, payment of compensation under the law of some other state would not, therefore, extinguish compensation rights under the Illinois law. No case has been found in which Illinois has held that an award in the state where the accident occurred prevented a subsequent award in Illinois where the employment contract had been made, and there is no statutory provision (as there was in Texas) preventing recovery in case the injured employee recovers compensation in the state in which the injury occurs. In view of the Illinois law, it is difficult to see how the courts of that State could hold that an award in the state in which the injury occurred would bar an award in Illinois, where the employment contract had been entered into. Thus the present controversy presents squarely the situation expressly not passed upon in *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, and the express reservation justifies the conclusion that this Court did not intend its decision to apply to a factual situation different from that presented, and especially, not to a factual situation like that presented in the instant case.

POINT C

Provisions in Wisconsin Compensation Act for payment of $75 into State Treasury for second injury fund in cases of specified injuries, constitute sufficient grounds for creation of exception to full faith and credit clause.

In *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, 438, this Court recognized "that there may be exceptional cases in which the judgment of one state may not override the laws and policy of another," but "this Court is the final arbiter of the extent of the exceptions." Under the

provisions of subsec. (1) of sec. 102.59, Wis. Stats., 1943, "If an employe has at the time of injury permanent disability the equivalent of 15 per cent or more of permanent total disability," he is paid additional compensation from "the funds provided in this section." Subsec. (2) of sec. 102.59, Wis. Stats., 1943, provided in part as follows: "In case of the loss or of the total impairment of a hand, arm, foot, leg, ear or eye, the employer shall be required to pay seventy-five dollars into the state treasury." Subsec. (3) of sec. 102.59, Wis. Stats., 1943, provided that "The moneys so paid into the state treasury, with all accrued interest, is hereby appropriated to the commission for the discharge of all liability for special additional indemnity accruing under this section."

The duty is placed on the Attorney General to "represent the state in all cases involving payment into or out of the state treasury under the provisions of subsection (3) of section 20.07, and sections 102.49 and 102.59" (subsec. (1) of sec. 102.64, Wis. Stats., 1943). The purpose of the "second injury" provisions of the Wisconsin Compensation Act is to eliminate discrimination against the employee who had previously lost an eye, ear, hand, arm, foot or leg, when he comes to seek re-employment, and to secure to an employee suffering the total impairment of a second member such indemnity as is commensurate with the seriousness of the injury. It should be noted that Illinois also has a "second injury" fund Illinois Workmen's Compensation Act, § 7(e); § 8(e)20 and (f). Ill. Rev. Stat., 1943, ch. 48, § 144(e); § 145(e)20 and (f)). Louisiana, however, does not appear to have a "second injury" fund, and hence *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, could give no consideration to a compensation act which provides not only for payments to the injured employee, but also for payments into a state fund.

The fact that in the present case the Industrial Commission of Wisconsin reserved the question of payment to the state fund (R. 123, 129-130) seems immaterial; the right to order payment in the future is of prime importance. An exception to the full faith and credit clause, based on the interest of the State of Wisconsin, as distinct from the rights of the injured employee, is urged because of the statutory provision for payments to the State of Wisconsin. Mr. Justice Douglas said in his concurring opinion in *Esenwein* v. *Commonwealth*, 325 U. S. 279, 282 (1945):

> "• • • The problem under the full faith and credit clause is to accommodate as fully as possible the conflicting interests of the two States."

Because this Court is the final arbiter, it is respectfully submitted that a writ of certiorari should be granted to determine whether an exception should be made to the full faith and credit clause, so that the interests of the State of Wisconsin in the application of the Compensation Act can be accommodated without undue conflict with the interests of the State of Illinois.

POINT D

Because of apparent departure from generally recognized rule in compensation cases, decision in Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, should be re-examined and limits of application indicated.

The decision of *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, is in apparent conflict with the practice generally accepted and followed by the states in compensation cases. American Law Institute, Restatement of Conflict of Laws (1934), § 403, states the rule:

> "Award already had under the Workmen's Compensation Act of another state will not bar a proceed-

ing under an applicable Act, but the amount paid on a prior award in another state will be credited on the second award."

This was also the rule followed by Wisconsin (see opinion of the Wisconsin Supreme Court in the instant case, 248 Wis. 570, 572 (R. 181)).

In the majority opinion in *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, it is stated that this rule "would seem to be intended as nothing more than a statement of local rules of conflict of laws when unaffected by the full faith and credit clause, since full faith and credit, if it does not require that a first award bar a second, would not compel credits upon the second award of payments made under the first (footnote, p. 441). It is respectfully submitted, however, that the fact that most states applying the *Restatement* rule gave credit on their awards for the amounts previously awarded in another state is also consistent with a possible interpretation that they thus intended to fulfill the requirements of the full faith and credit clause. It is submitted that this Court should grant certiorari to re-examine *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, and define the limits of the applicability of such a rule which seems to oppose directly the generally accepted practice.

There also seems to be a conflict between language in the *Magnolia* case and the holding of *Williams* v. *North Carolina*, 325 U. S. 226 (1945). In the *Magnolia* case it was said; "From the beginning this Court has held that these provisions have made that which has been adjudicated in one state *res judicata* to the same extent in every other" (320 U. S. 430, 438). In *Williams* v. *North Carlina*, 325 U. S. 226 (1945), it was held that North Carolina was not required by the full faith and credit clause to recognize a finding of domicile made by a Nevada court in a divorce

proceeding in Nevada, a finding which certainly was *res judicata* in Nevada. Does the statement quoted from the *Magnolia* case still stand?

Williams v. *North Carolina*, 325 U. S. 226 (1945) also creates uncertainty in regard to the *Magnolia* case wherein Mr. Justice Jackson stated in his concurring opinion:

> "I concur with the opinion of the Chief Justice.
>
> "If the Court were to reconsider *Williams* v. *North Carolina*, 317 U. S. 287, in the light of the views expressed by Mr. Justice Black, I should adhere to the views I expressed in dissent there. Until we do so, I consider myself bound by that decision" (320 U. S. 446).

In *Williams* v. *North Carolina*, 325 U. S. 226 (1945), Mr. Justice Jackson joined in the concurring opinion filed by Mr. Justice Murphy, and so uncertainty has arisen as to whether the holding of *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, would be adhered to.

This uncertainty as to the applicability, extent and force of the holding of the *Magnolia* case has been reflected in comments in legal writing. For instance, Samuel B. Horovitz in his recent treatise on "Injury and Death Under Workmen's Compensation Laws" (1944), has to say in regard to the Magnolia case:

> "Hence, after three decades of workmen's compensation decisions, the law of extraterritoriality remains unnecessarily in a state of chaos and confusion. Undoubtedly efforts will be made to limit the Magnolia Petroleum Company decision from the start to cases in which (1) the employee has personally 'sought' the award; (2) he has successfully 'recovered' an award, rather than having lost his case; (3) there is a final 'judgment' either in a court, on appeal from the board, or where the board decision by law amounts to a final judgment or decree; and (4) the act of the first state to

be 'selected' does not allow additional awards, *i. e.*; a second recovery" (p. 41).

In the article by Elliott E. Cheatham on "Res Judicata and the Full Faith and Credit Clause: Magnolia Petroleum Co. *v.* Hunt," 44 Columbia Law Review 330 (1944), the author asks the question: "Are there in the setting of this case or in the operation of the Texas judgment any grounds for an exception?" (p. 342), and then states:

> When the setting and nature of workmen's compensation are considered, several factors appear which may well be thought to call for exceptional treatment, and four will be mentioned.
>
> "1. The party seeking relief is a member of the necessitous class, injured workmen, which in many branches of our law has received special treatment. • • •
>
> "2. Workmen's compensation statutes are addressed to a continuing situation, involving the burden of support of a person unable to support himself, and in this situation the home state of the worker has the special interest which the Supreme Court has many times recognized. • • •
>
> "3. Workmen's compensation proceedings differ in an important respect, as Justice Black points out, from the proceedings in which the court heretofore has considered the effect of a judgment or award. • • •
>
> "4. Adherence to the rule of the principal case may give the employer or his insurance company an opportunity for overreaching. • • •
>
> "These considerations show that exceptional treatment of workmen's compensation awards may be wise. They have induced the majority of the states which have dealt with the matter to allow a second, supplemental award. It is the function of the Supreme Court to weigh the factors and to determine whether a de-

parture from the usual requirements of full credit is justified" (pp. 343-345).

See also, Workmen's Compensation Award—Commonplace or Anomaly in Full Faith and Credit Pattern?" by Paul A. Wolkin in 92 U. of Pa. Law Review (1944), p. 401, and "Reflections on Magnolia Petroleum Co. *v.* Hunt," by Harold Wright Holt in 30 Cornell Law Quarterly (1944), p. 160.

Conclusion

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers and that to such end a writ of certiorari should be granted and this Court should review the decision of the Supreme Court of Wisconsin and finally reverse it.

JOHN E. MARTIN,
Attorney General of Wisconsin;
MORTIMER LEVITAN,
Assistant Attorney General of Wisconsin,
Counsel for Petitioners, Industrial Commission of Wisconsin and State of Wisconsin.

I hereby join in the foregoing brief in support of petition for writ of certiorari.

LEO THOMAS KOPP,
Pro se.